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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/599,679	06/22/2000	Robert J. Brockway	TER0400.010	7502
26629	7590	12/31/2007		
ZIOLOKOWSKI PATENT SOLUTIONS GROUP, SC (ZPS)			EXAMINER	
136 S WISCONSIN ST			STORMER, RUSSELL D	
PORT WASHINGTON, WI 53074				
			ART UNIT	PAPER NUMBER
			3617	
			NOTIFICATION DATE	DELIVERY MODE
			12/31/2007	ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

info@zpsspatents.com  
rlt@zpsspatents.com  
klb@zpsspatents.com

## Office Action Summary

Application No.

09/599,679

Applicant(s)

BROCKWAY, ROBERT J.

Examiner

Russell D. Stormer

Art Unit

3617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 05 April 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-23, 25 and 29-31 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-23, 25, 29-31 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

***Reissue Applications***

The reissue oath/declaration filed with this application is defective (see 37 CFR 1.175 and MPEP § 1414).

In the Reissue Oath and Declarations filed December 11, 2006:

In item 4, the Duty to Disclose statement must acknowledge the duty to disclose all information known to be material to "patentability" as set forth in 37 CFR 1.63.

Item 6 in each of the papers referring to the errors is improper. The statement does not comply with 37 CFR 1.175(a)(2) because it lacks the required wording of "all errors" arose without any deceptive intention. The wording used by Applicant should be changed to "All errors corrected in this reissue..."

It is suggested that Applicant file a single reissue declaration (not combined with an oath) using form PTO/SB/51.

The amendment to the claims filed on April 5, 2007 continues to be improper. In a reissue application, the subject matter to be deleted should not be shown in strike-through; it must be enclosed in brackets. See MPEP 1453 and 37 CFR 1.173(d).

The marked-up copy of the claims submitted April 5, 2007 which complies with 37 CFR 1.121 need not be resubmitted.

This application is objected to under 37 CFR 1.172(a) as lacking the written consent of all assignees owning an undivided interest in the patent. The consent of the assignee must be in compliance with 37 CFR 1.172.

The statement under 37 CFR 373(b) filed June 13, 2006 is noted. However, this statement does not satisfy the requirement for written consent of all assignees. The statement under 37 CFR 373(b) merely establish ownership. See MPEP § 1410.01.

A proper assent of the assignee in compliance with 37 CFR 1.172 and 3.73 is required in reply to this Office action.

### ***Claim Rejection***

Claims 1-23, 25, and 29-31 are rejected as being based upon a defective reissue declaration under 35 U.S.C. 251 as set forth above. See 37 CFR 1.175.

The nature of the defect(s) in the declaration (and oath) is set forth in the discussion above in this Office action.

### ***Allowable Subject Matter***

Claims 1-23, 25, and 29-31 would be allowable if rewritten or amended to overcome the rejection under 35 U.S.C. 251 set forth in this Office action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Russell D. Stormer whose telephone number is (571)

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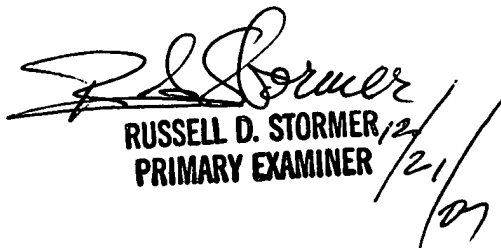
272-6687. The examiner can normally be reached on Monday through Friday, 9 AM to 4 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Morano can be reached on (571) 272-6684. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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12/21/07

  
RUSSELL D. STORMER  
PRIMARY EXAMINER 12/21/07